

**BEFORE THE
DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:)

ANDREA BOWER, M.D.)

File No. 10-2001-123318

Physician's and Surgeon's)
Certificate No. G36954)

Respondent.)
_____)

DECISION

The attached Stipulated Settlement and Section 822 Order is hereby adopted as the Decision and Order of the Division of Medical Quality of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on May 5, 2003.

IT IS SO ORDERED April 3, 2003.

MEDICAL BOARD OF CALIFORNIA

By: _____

Lorie G. Rice, Chair

Panel A

Division of Medical Quality

1 BILL LOCKYER, Attorney General
of the State of California
2 D. KENNETH BAUMGARTEN, State Bar No.124371
Deputy Attorney General
3 California Department of Justice
110 West "A" Street, Suite 1100
4 San Diego, California 92101
P.O. Box 85266
5 San Diego, California 92186-5266
Telephone: (619) 645-2195
6 Facsimile: (619) 645-2061
7 Attorneys for Complainant

8
9 **BEFORE THE**
DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 10-2001-123318

13 **ANDREA BOWER, M.D.**
14 120 Craven Road, Suite 101
San Marcos, CA 92078

OAH No. L-2002060318

15 Physician and Surgeon's
16 Certificate No. G36954

**STIPULATED SETTLEMENT
AND SECTION 822 ORDER**

17 Respondent.
18

19 IT IS HEREBY STIPULATED AND AGREED, by and between the parties to the
20 above-entitled proceedings, that the following matters are true:

21 **PARTIES**

22 1. Ron Joseph, the Executive Director of the Medical Board of California,
23 Department of Consumer Affairs, hereinafter "Complainant", enters into this Stipulation solely in
24 his official capacity. He is represented in this matter by Bill Lockyer, Attorney General of the
25 State of California, by D. Kenneth Baumgarten, Deputy Attorney General.

26 2. Andrea Bower, M.D., hereinafter "Respondent", is represented in this
27 matter by David Rosenberg, Esq., who has consulted with and advised Respondent with respect
28 to this Stipulated Settlement Agreement.

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

- 2
- 3
- 4

5
6
7
8
9

10
11
12
13
14

15
16
17
18
19

20

21
22
23
24
25
26

27

28

constitute cause for imposing discipline upon her Physician and Surgeon's Certificate.

Respondent is fully aware of her right to a hearing on the charges contained in the Accusation, her right to confront and cross-examine witnesses against her, her right to the use of subpoenas to compel the attendance of witnesses and the production of documents in both defense and mitigation of the charges, her right to reconsideration, court review and any and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

9. In order to avoid the expense and uncertainty of a hearing on the charges pending in the Accusation, Respondent voluntarily, knowingly and intelligently waives and gives up each and every right set forth above and enters into this Stipulation.

CONTINGENCY

10. This Stipulation shall be subject to the approval of the Division.

Respondent understands and agrees that the Board 's staff and counsel for Complainant may communicate directly with the Division regarding this Stipulation and settlement, without notice to or participation by Respondent or her counsel. If the Division fails to adopt this Stipulation as its Order, except for this paragraph, the Stipulated Settlement and Section 822 Order shall be of no force or effect, and it shall be inadmissible in any legal action between the parties, and the Division shall not be disqualified from further action in this matter by virtue of its consideration of this Stipulation.

11. The parties agree that facsimile copies of this Stipulated Settlement and Section 822 Order, including facsimile signatures thereto, shall have the same force and effect as original Stipulated Settlement and Section 822 Order and signatures.

CULPABILITY

12. Respondent admits that the Divisions's investigation reveals that beginning in the spring of 2000, up to and including August 2001, Respondent inappropriately self administered Demerol in a manner that was dangerous and injurious to herself and others. Respondent further admits that in an attempt to conceal her self use of Demerol she, on some occasions, after taking Demerol from a bottle for her own use, would refill the bottle of Demerol with other medications.

13. Respondent further admits that as a result of her drug use, she has a mental and/or physical illness that impairs her ability to practice medicine safely.

14. In consideration of the foregoing admissions and stipulated matters, the parties agree that the Division shall, without further notice or formal proceeding, issue and enter the following order:

ORDER

IT IS HEREBY ORDERED that, pursuant Section 822 of the Business and Professions Code, Physician and Surgeon's Certificate No. G 36954, issued to Respondent ANDREA BOWER, M.D., is suspended upon the effective date of this Decision and shall remain suspended until the Division determines that it has received competent evidence of the absence or control of the condition or conditions that impair her ability to practice medicine safely, and until it is satisfied that, with due regard for the public health and safety, Respondents right to practice medicine should be reinstated.

TERMS AND CONDITIONS FOR REINSTATEMENT

Prior to applying for reinstatement, Respondent shall satisfy the following requirements:

1. **DIVERSION PROGRAM**

As a **condition precedent** to Respondent seeking reinstatement of her medical license, Respondent shall enroll and participate in the Division's Diversion Program until such time that the Division determines that further treatment and rehabilitation is no longer necessary. Quitting the program without permission, or being expelled for cause, shall constitute a breach of this agreement and the availability of reinstatement pursuant to this agreement. Respondent may not apply for reinstatement of her medical license until she receives written authorization from the Diversion Program to do so.

Should the Division of Medical Quality determine that Respondent can safely resume the practice of medicine, the Division may, pursuant to Business and Professions Code section 823, impose terms and conditions to be complied with by

1 Respondent after her license has been fully restored. The Division may, among other
2 things, also require further training and testing in Respondent's medical specialty; require
3 a psychological and/or physical examination by one or more physicians or psychologists;
4 require continuing treatment for any physical or mental condition, including continued
5 participation in the Board's Diversion Program, and restrict or limit the scope of
6 Respondent's medical practice.

7 2. **COMPLETION OF PACE PROGRAM**

8 As a **condition precedent** to Respondent seeking reinstatement of her
9 medical license, she must first take and successfully complete, at her own expense, the
10 Physician Assessment and Clinical Education Program at the University of California,
11 San Diego School of Medicine (hereinafter, the "Pace Program"). As a part of that
12 program, Respondent shall undergo assessment, clinical training and examination. First,
13 Respondent shall undergo the comprehensive assessment program including the
14 measurement of medical skills and knowledge, the appraisal of physical health and
15 psychological testing. After assessment, the PACE Evaluation Committee will review all
16 results and make a recommendation to the Division or its designee, Respondent and other
17 authorized personnel as to what clinical training is required, including scope and length,
18 treatment of any medical or psychological condition, and any other factors affecting
19 respondent's practice of medicine. Respondent shall undertake whatever clinical training
20 and treatment of any medical or psychological condition as may be recommended by the
21 PACE Program.

22 At the completion of the PACE Program, Respondent shall submit to an
23 examination on its contents and substance. The examination shall be designed and
24 administered by the PACE faculty. Respondent shall not be deemed to have successfully
25 completed the program unless she passes the examination. Respondent agrees that the
26 determination of the PACE Program faculty as to whether or not she has passed the
27 examination and/or successfully completed the PACE Program shall be binding.

28 ///

1 If and when Respondent successfully completes the PACE Program,
2 including the examination referenced above, she agrees to cause the PACE Program
3 representative to forward a Certification of Successful Completion of the program to the
4 Division or its designee.

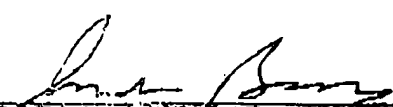
5 **ACCEPTANCE**

6 I have carefully read the above Stipulated Settlement and Section 822 Order and
7 have consulted with my attorney, David Rosenberg, with respect to its effect on my ability to
8 practice medicine in California if this Stipulation is adopted by the Division.

9 I understand that as a result of my ^{stipulation} ~~voluntary surrender~~ ^{AS B} of my Physician and
10 Surgeon's Certificate No. 36954, I will no longer be permitted to practice medicine in California.

11 I enter into this Stipulated Settlement voluntarily, knowingly and intelligently and
12 agree to be bound by its terms and conditions.

13 DATED: 1/29/2003

14
15 
16 ANDREA BOWER, M.D.
Respondent

17 I have reviewed this Stipulation with my client, Andrea Bower, M.D., and have
18 consulted with her regarding its effect on her medical license.

19 DATED: 1/29/03

20
21 
22 DAVID ROSENBERG, ESQ.
Attorney for Respondent

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

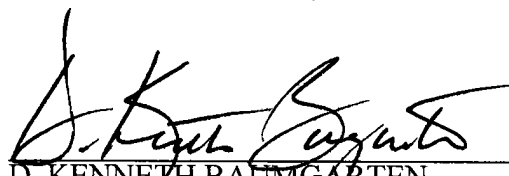
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ENDORSEMENT

The foregoing Stipulated Settlement and Section 822 Order is hereby respectfully submitted for consideration by the Division of Medical Quality, Medical Board of California of the Department of Consumer Affairs.

DATED: February 3, 2003

BILL LOCKYER, Attorney General
of the State of California


D. KENNETH BAUMGARTEN
Deputy Attorney General

Attorneys for Ron Joseph, Executive Director
Medical Board of California

Exhibit A: Accusation No. 10-2001-123318

EXHIBIT A

BILL LOCKYER, Attorney General
of the State of California
BARRY D. LADENDORF, State Bar No. 52548
Supervising Deputy Attorney General
California Department of Justice
110 West "A" Street, Suite 1100
San Diego, CA 92101
P.O. Box 85266
San Diego, CA 92186-5266
Telephone: (619) 645-2063
Facsimile: (619) 645-2061

Attorneys for Complainant

BEFORE THE
DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Case No. 10-2001-123318

ANDREA BOWER, M.D.
120 Craven Road, Suite 101
San Marcos, California 92078

ACCUSATION

Physician and Surgeon's Certificate No. G 36954

Respondent.

Complainant alleges:

PARTIES

1. Ron Joseph (Complainant) brings this Accusation solely in his official capacity as the Executive Director of the Medical Board of California, Department of Consumer Affairs.

2. On or about July 1, 1978, the Medical Board of California issued Physician's and Surgeon's Certificate Number G 36954 to Andrea Bower, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought herein. The license is renewed and current with an expiration date of January 31, 2002. On September 21, 2001, a full interim suspension order- no practice was issued.

JURISDICTION

3. This Accusation is brought before the Division of Medical Quality, Medical Board of California (Division), under the authority of the following sections of the Business and Professions Code (Code).

4. Section 2234 of the Code states:

“The Division of Medical Quality shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

“(a) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provision of this chapter [Chapter 5, the Medical Practice Act].

“(b) Gross negligence.

“(c) Repeated negligent acts.

“(d) Incompetence.

“(e) The commission of any act involving dishonesty or corruption which is substantially related to the qualifications, functions, or duties of a physician and surgeon.

“(f) Any action or conduct which would have warranted the denial of a certificate.”

5. Section 2227 of the Code provides that a licensee who is found guilty under the Medical Practice Act may have his or her license revoked, suspended for a period not to exceed one year, placed on probation and required to pay the costs of probation monitoring, or such other action taken in relation to discipline as the Division deems proper.

///

///

///

///

///

1 6. Section 2239 of the Code provides that the use or prescribing for or
2 administering to himself or herself, of any controlled substance; or the use of any of the
3 dangerous drugs specified in Section 4211, or of alcoholic beverages, to the extent, or in such a
4 manner as to be dangerous or injurious to the licensee...or to the extent that such use impairs the
5 ability of the licensee to practice medicine safely... or self-administration of any of the substances
6 referred to in this section, or any combination thereof, constitutes unprofessional conduct.

7 7. Section 11173 of the Health and Safety Code makes it a criminal offense
8 for any person to obtain or attempt to obtain controlled substances...(1) by fraud, deceit,
9 misrepresentation, or subterfuge; (2) or by the concealment of a material fact.

10 8. Section 14124.12 of the Welfare and Institutions Code states, in pertinent
11 part:

12 “(a) Upon receipt of written notice from the Medical Board of California,
13 the Osteopathic Medical Board of California, or the Board of Dental Examiners of
14 California, that a licensee's license has been placed on probation as a result of a
15 disciplinary action, the department may not reimburse any Medi-Cal claim for the type of
16 surgical service or invasive procedure that gave rise to the probation, including any dental
17 surgery or invasive procedure, that was performed by the licensee on or after the effective
18 date of probation and until the termination of all probationary terms and conditions or
19 until the probationary period has ended, whichever occurs first. This section shall apply
20 except in any case in which the relevant licensing board determines that compelling
21 circumstances warrant the continued reimbursement during the probationary period of
22 any Medi-Cal claim, including any claim for dental services, as so described. In such a
23 case, the department shall continue to reimburse the licensee for all procedures, except for
24 those invasive or surgical procedures for which the licensee was placed on probation.”

25 ///

26 ///

27 ///

28 ///

1 9. Section 822 of the Code states:

2 “If a licensing agency determines that its licentiate’s ability to practice his
3 or her profession safely is impaired because the licentiate is mentally ill, or physically ill
4 affecting competency, the licensing agency may take action by any one of the following
5 methods: (a) revoking the Licentiate’s certificate or license; (b) Suspending the
6 licentiate’s right to practice; (c) Placing the licentiate on probation; (d) Taking such other
7 action in relation to the licentiate as the licensing agency in its discretion deems proper.”

8 10. Section 125.3 of the Code provides, in pertinent part, that the Board may
9 request the administrative law judge to direct a licentiate found to have committed a violation or
10 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
11 and enforcement of the case.

12 FIRST CAUSE FOR DISCIPLINE

13 (Unlawful Use or Prescribing)

14 11. Respondent is subject to disciplinary action under section 2239 on account
15 of the following:

16 a. In November 2000, respondent collapsed while working at
17 Palomar Medical Center in Escondido. At the time she was attended to by
18 nursing staff, it was noted that respondent seemed confused and that her speech
19 was slurred. Respondent refused to provide a urine sample.

20 b. On another occasion during this same time frame,
21 respondent failed to keep a scheduled appointment at her office. When she was
22 called to come into the office, respondent collapsed in the parking lot. At
23 approximately 7 p.m. that day, respondent was taken to the hospital.

24 c. In December 2000 respondent was sent to a treatment
25 facility in Oregon by the Medical Board’s Diversion Program. Respondent left
26 the facility against medical advice after about 30 days.

27 ///

28 ///

1 d. Sometime in early 2001, staff working with respondent
2 began suspecting she was abusing the Demerol kept in respondent's clinic for
3 patient B.T. who had intractable pain.

4 e. On or about May 18, 2001, patient B.T. came into
5 respondent's office for her Demerol injection. Staff were unable to locate the new
6 bottle of Demerol B.T. had just brought into the office. A prior bottle dated May
7 5, 2001, did not have enough Demerol to administer to B.T. The new bottle was
8 found in respondent's desk drawer half empty. On May 20, 2001, the May 5
9 bottle was found more than one-third full, while the newer May 15 bottle was
10 more than half full.

11 f. On or about August 8, 2001, respondent's clinic staff heard
12 her rummaging around the locked box inside a drawer where the Demerol was
13 kept. Respondent was then observed going into a bathroom. The new bottle of
14 Demerol used by patient B.T. was missing. When respondent left the bathroom
15 and returned the bottle, there was less in it then prior to respondent's taking it.
16 Wrappers from a syringe were then discovered in the bathroom after respondent
17 left.

18 g. On August 10, 2001, staff members checked the Demerol
19 bottle again and this time found it full. The staff was concerned that respondent
20 was diluting the Demerol after having used it herself.

21 h. On or about August 20, 2001, respondent was interviewed
22 at the San Diego Medical Board office. During the interview she admitted having
23 a 1981 drunk driving conviction, and a history of alcoholism which led to her
24 going to Mesa Vista Hospital in 1984 and to the recovery home, Serenity House,
25 in 1985, for three months. Although she said she had been sober since,
26 respondent admitted using IV Demerol at the end of her alcoholism, and being
27 prescribed Xanax and Valium by a psychiatrist. Respondent denied any substance
28 abuse since 1985.

1 i. At the same interview respondent also admitted to entering
2 the Diversion program and going to Springbrook in Oregon for one month (March
3 7, 2001) when she left "against medical advice."

4 j. After her return from Springbrook, Palomar Medical Center
5 began testing her urine. After giving the hospital a "cold" urine, she was advised
6 to re-enter the Diversion program, which respondent did not want to do. She
7 asked for, and received, a leave of absence, which was effective July 13, 2001.

8 k. During that same physician interview, respondent at first
9 denied that Demerol was kept on her office premises, saying that patient B.T.
10 would bring it back and forth. After being advised by the investigator that she had
11 seen a Demerol bottle in respondent's office that very morning, respondent
12 admitted that the Demerol was generally kept there, and that she gave other pain
13 patients Demerol from patient B.T.'s bottle. Respondent denied using any of
14 patient B.T.'s Demerol.

15 l. During an unannounced visit to respondent's office on
16 August 22, 2001, investigators seized a Demerol bottle which had just been used
17 to give patient B.T. her injection. The bottle was analyzed by the DEA lab and
18 found not to contain Demerol, but rather Nalbuphine HCL.

19 m. On August 31, 2001, a physician working in respondent's
20 office reported that respondent had possibly used Demerol that day. Again on
21 September 4, 2001, he checked the Demerol bottle, and although it had been about
22 one-third full on August 31st, it now contained only a trace amount.

23 n. On September 4, 2001, respondent provided a suitable
24 urine sample for analysis. The sample tested positive for Demerol.

25 o. On September 24, 2001, a Full Interim Suspension Order
26 precluding respondent from practicing medicine was entered against respondent.

27 ///

28 ///

12. Respondent is subject to disciplinary action in that she violated section 2239 by self using the Demerol of another patient thereby making her dangerous to herself and others. Paragraph 11 (a) through (o) is incorporated by reference as if fully set forth herein.

SECOND CAUSE FOR DISCIPLINE

(Dishonest Acts)

13. Respondent is subject to disciplinary action under section 2234 (e) on account of the following:

a. Respondent's stipulated Interim Suspension Order took effect September 24, 2001. Subsequent to that date she continued to see patients and/or monitor patient care, and prescribe and/or authorize refills of patient prescriptions.

b. Between December 5, 2001 and March 7, 2002, 14 prescriptions for eight different patients were phoned in using respondent's DEA registration number AB8704492.

c. In January 2002, Dr. Thomas D-J was working two days per week in respondent's office. This later became three days a week in March 2002. During that time respondent would review patient charts and make recommendations to Dr. D-J about patient care.

d. On or about February 18, 2002, respondent treated patient R.B. On or about February 13, 2002 patient M.G. was examined by respondent and treated for injuries received in a car accident. Respondent thereafter put false dates in the patients' charts.

e. On or about December 7, 2001, respondent prescribed Seravent for patient E.A. Since September 24, 2001, respondent had issued 21 new prescriptions and authorized 71 prescription refills from an Escondido Sav-On Pharmacy.

///

///

1 f. Sometime in 2002, respondent had authorized pharmacist
2 S.B. of the San Marcos Sav-On Drug store to fill a prescription for patient L.H.
3 Between September 24, 2001 and March 13, 2002, respondent had filled or
4 authorized some 225 total prescriptions through that Sav-On store.

5 g. Since September 24, 2001, respondent had written or
6 authorized 144 prescriptions through the Vons Pharmacy in San Marcos.

7 14. Respondent is subject to disciplinary action for violating section 2234(e)
8 in that during the time her license was suspended respondent continued to treat and/or monitor
9 patients, and continued to write and/or authorize the filling of prescriptions as set forth in
10 paragraph 13 (a) through (g) which is incorporated by reference as if fully set forth herein.

11 THIRD CAUSE FOR DISCIPLINE

12 (Obtaining Controlled Substance by Fraud or Deceit)

13 15. Respondent is subject to disciplinary action for having violated Health and
14 Safety Code section 11173 which makes it a criminal offense to obtain controlled substances by
15 fraud, deceit, misrepresentation, or false statement. Paragraph 11 (a) through (o) is incorporated
16 by reference as if fully set forth herein.

17 FOURTH CAUSE FOR DISCIPLINE

18 (Violation of Drug Statutes)

19 16. Respondent is subject to disciplinary action for having violated section
20 2238 as a result of her using another patient's Demerol, and as a result of her writing and
21 authorizing prescriptions at a time when she was not licensed to do so. Paragraph 11 is
22 incorporated by reference herein as if fully set forth.

23 ///

24 ///

25 ///


26 ///

27 ///

28 //

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

1. Revoking or suspending Physician's and Surgeon's Certificate Number G36954, issued to Andrea Bower;
2. Revoking, suspending or denying approval of Andrea Bower's authority to supervise physician's assistants, pursuant to section 3527 of the Code;
3. Ordering Andrea Bower to pay the Division of Medical Quality the reasonable costs of the investigation and enforcement of this case, and, if placed on probation, the costs of probation monitoring;
4. Taking such other and further action as deemed necessary and proper.


RON JOSEPH
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

19
20
21
22
23
24
25
26
27
28

**BEFORE THE
DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation)
Against:)

Andrea Bower, M.D.)

Physician's and Surgeon's)
Certificate No. G 36954)

Respondent.)
_____)

File No. 10-2001-123318

STATEMENT TO RESPONDENT

RESPONDENT ABOVE - NAMED:

There is attached hereto a copy of an Accusation which has been filed with the office of the State agency named herein and which is hereby served upon you.

Unless a written request for a hearing signed by you or on your behalf is delivered or mailed to the agency named herein within fifteen (15) days after a copy of the Accusation was personally served on you or mailed to you, you will be deemed to have waived your right to a hearing in this matter and the agency may proceed upon the Accusation without a hearing and may take action thereon as provided by law.

The request for a hearing may be made by delivering or mailing one of the enclosed forms entitled "Notice of Defense" or by delivering or mailing a Notice of Defense as provided in Section 11506 of the Government Code to both the Deputy Attorney General and the Medical Board of California. The Deputy Attorney General's name, address and telephone number appears on the front page of the Accusation. The notice to the Medical Board should be directed to the Discipline Coordination Unit, 1426 Howe Avenue, Suite 54, Sacramento, CA 95825-3236

The hearing may be postponed for a good cause. If you have good cause, you are obliged to notify the agency or, if an administrative law judge has been assigned to the hearing, the Office of Administrative Hearings, within 10 working days after you discover the good cause. Failure to notify the agency within 10 days will deprive you of a postponement.

You may, but need not, be represented by counsel at any or all stages of these proceedings. The enclosed Notice of Defense, if signed and filed with the above - designated agency shall be deemed a specific denial of all parts of the Accusation, but you will not be permitted to raise any objection to the form of the Accusation unless you file a further Notice of Defense as provided in Section 11506 of the Government Code within fifteen (15) Days after service of the Accusation upon you.

If you file ~~any~~ Notice of Defense within the time permitted, a hearing will be had upon the charges made in the Accusation.

Copies of Section 11507.5, 11507.6, 11507.7 and 11455.10 of the Government Code are attached.

If you desire the names and addresses of witnesses or an opportunity to inspect and copy the items mentioned in Section 11507.7 of the Government Code in the possession, custody or control of the agency, you may contact the Deputy Attorney General, whose name, address, and telephone number appear on the first page of the Accusation.

STIPULATED SETTLEMENTS

Very often, administrative cases are settled by the parties through discussions and negotiations. Our procedures do not include a formal settlement conference, which is a common procedure in civil court cases. However, all parties in this case should get together at the earliest time to discuss any possible stipulations or settlement that can be mutually agreed upon.

All Stipulated settlement of cases are subject to the approval of the Division of Medical Quality. The Division has published a booklet (a copy is enclosed) setting forth its disciplinary guidelines and model disciplinary orders. By looking up your relevant code violations in this booklet, you can learn the penalty ranges and conditions acceptable to the Division.

PROVIDED PURSUANT TO GOVERNMENT CODE SECTIONS 11504 AND 11505

SECTION 11507.5: Discovery Limitations

The provisions of Section 11507.6 provide the exclusive right to and method of discovery as to any proceeding governed by this chapter.

SECTION 11507.6: Discovery Rights & Procedures

After initiation of a proceeding in which a respondent or other party is entitled to a hearing on the merits, a party, upon written request made to another party, prior to the hearing and within 30 days after service by the agency of the initial pleading or within 15 days after the service of an additional pleading, is entitled to (1) obtain the names and addresses of witnesses to the extent known to the other party, including, but not limited to, those intended to be called to testify at the hearing, and (2) inspect and make a copy of any of the following in the possession or custody or under the control of the other party:

(a) A statement of a person, other than the respondent, named in the initial administrative pleading, or in any additional pleading, when it is claimed that the act or omission of the respondent as to this person is the basis for the administrative proceeding;

(b) A statement pertaining to the subject matter of the proceeding made by any party to another party or person;

(c) Statements of witnesses then proposed to be called by the party and of other persons having personal knowledge of the acts, omissions or events which are the basis for the proceeding, not included in (a) or (b) above;

(d) All writings, including, but not limited to, reports of mental, physical and blood examinations and things which the party then proposes to offer in evidence;

(e) Any other writing or thing which is relevant and which would be admissible in evidence;

(f) Investigative reports made by or on behalf of the agency or other party pertaining to the subject matter of the proceeding, to the extent that these reports (1) contain the names and addresses of witnesses or of persons having personal knowledge of the acts, omissions or events which are the basis for the proceeding, or (2) reflect matters perceived by the investigator in the course of his or her investigation, or (3) contain or include by attachment any statement or writing described in (a) to (e), inclusive, or summary thereof.

For the purpose of this section, "statements" include written statements by the person signed or otherwise authenticated by him or her, stenographic, mechanical, electrical or other recordings, or transcripts thereof, of oral statements by the person, and written reports or summaries of these oral statements.

Nothing in this section shall authorize the inspection or copying of any writing or thing which is privileged from disclosure by law or otherwise made confidential or protected as the attorney's work product.

(g) In any proceeding under subdivision (i) or (j) of Section 12940, or Section 19572 or 19702, alleging conduct which constitutes sexual harassment, sexual assault, or sexual battery, evidence of specific instances of a complainant's sexual conduct with individuals other than the alleged perpetrator is not discoverable unless it is to be offered at a hearing to attack the credibility of the complainant as provided for under subdivision (j) of Section 11513. This subdivision is intended only to limit the scope of discovery; it is not intended to affect the methods of discovery allowed under this section.

SECTION 11507.7: Petition to compel discovery; Order; Sanctions

(a) Any party claiming the party's request for discovery pursuant to Section 11507.6 has not been complied with may serve and file with the administrative law judge a motion to compel discovery, naming as respondent the party refusing or failing to comply with Section 11507.6. The motion shall state facts showing the respondent party failed or refused to comply with Section 11507.6, a description of the matters sought to be discovered, the reason or reasons why the matter is discoverable under that section, that a reasonable and good faith attempt to contact the respondent for an informal resolution of the issue has been made, and the ground or grounds of respondent's refusal so far as known to the moving party.

(b) The motion shall be served upon respondent party and filed within 15 days after the respondent party first evidenced failure or refusal to comply with Section 11507.6 or within 30 days after request was made and the party has failed to reply to the request, or within another time provided by stipulation, whichever period is longer.

(c) The hearing on the motion to compel discovery shall be held within 15 days after the motion is made, or a later time that the administrative law judge may on the judge's own motion for good cause determine. The respondent party shall have the right to serve and file a written answer or other response to the motion before or at the time of the hearing.

(d) Where the matter sought to be discovered is under the custody or control of the respondent party and the respondent party asserts that the matter is not a discoverable matter under the provisions of Section 11507.6, or is privileged against disclosure under those provisions, the administrative law judge may order lodged with it matters provided in subdivision (b) of Section 915 of the Evidence Code and examine the matters in accordance with its provisions.

(e) The administrative law judge shall decide the case on the matters examined in camera, the papers filed by the parties, and such oral argument and additional evidence as the administrative law judge may allow.

(f) Unless otherwise stipulated by the parties, the administrative law judge shall no later than 15 days after the hearing make it order denying or granting the motion. The order shall be in writing setting forth the matters the moving party is entitled to discover under Section 11507.6. A copy of the order shall forthwith be served by mail by the administrative law judge upon the parties. Where the order grants the motion in whole or part, the order shall not become effective until 10 days after the date the order is served. Where the order denies relief to the moving party, the order shall be effective on the date it is served.

SECTION 11455.10. Grounds for contempt sanction

A Person is subject to the contempt sanction for any of the following in an adjudicative proceeding before an agency:

- (a) Disobedience of or resistance to a lawful order;
- (b) Refusal to take the oath or affirmation as a witness or thereafter refusal to be examined;
- (c) Obstruction or interruption of the due course of the proceeding during a hearing or near the place of the hearing by any of the following:
 - (1) Disorderly, contemptuous, or insolent behavior toward the presiding officer while conducting the proceeding;
 - (2) Breach of the peace, boisterous conduct, or violent disturbance;
 - (3) Other unlawful interference with the process or proceedings of the agency.
- (d) Violation of the prohibition of ex parte communications under Article 7 (commencing with Section 11430.10);
- (e) Failure or refusal, without substantial justification, to comply with a deposition order, discovery request, subpoena, or other order of the presiding officer, or moving, without substantial justification, to compel discovery.

**BEFORE THE
DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation)	
Against:)	File No. 10-2001-123318
)	
Andrea Bower, M.D.)	NOTICE OF DEFENSE
)	
Physician's and Surgeon's)	
Certificate No. G 36954)	
)	
Respondent.)	(Pursuant to sections 11505 and 11506,
_____)	Government Code)

I, the undersigned, the respondent named in the above-entitled proceeding, hereby acknowledge receipt of a copy of the Accusation, Statement to Respondent, Government Code sections 11507.5, 11507.6, 11507.7 and 11455.10, and two copies of a Notice of Defense.

I hereby request a hearing in this proceeding to permit me to present my defense to the charges contained in said Accusation.

DATED: _____

Respondent's Name _____

Respondent's Signature _____

Respondent's Mailing Address _____

City, State and Zip Code _____

Respondent's Telephone Number _____

Check off appropriate box

- ☐ I am represented by counsel, whose name, address and telephone number appear below:

Counsel's Name _____

Counsel's Mailing Address _____

City, State and Zip Code _____

Counsel's Telephone Number _____

- ☐ I am not now represented by counsel. If and when counsel is retained, immediate notification of the attorney's name, address, and telephone number will be filed with you so that counsel will be on record to receive legal notices, pleading, and other papers.

Section **14124.12** is added to the Welfare and Institutions Code, to read:

14124.12. (a) Upon receipt of written notice from the Medical Board of California, the Osteopathic Medical Board of California, or the Board of Dental Examiners of California, that a licensee's license has been placed on probation as a result of a disciplinary action, the department may not reimburse any Medi-Cal claim for the type of surgical service or invasive procedure that gave rise to the probation, including any dental surgery or invasive procedure, that was performed by the licensee on or after the effective date of probation, and until the termination of all probationary terms and conditions or until the probationary period has ended, whichever occurs first. This section shall apply except in any case in which the relevant licensing board determines that compelling circumstances warrant the continued reimbursement during the probationary period of any Medi-Cal claim, including any claim for dental services, as so described. In such a case, the department shall continue to reimburse the licensee for all procedures, except for those invasive or surgical procedures for which the licensee was placed on probation.

(b) The Medical Board of California, the Osteopathic Medical Board of California, and the Board of Dental Examiners of California, shall work in conjunction with the State Department of Health Services to provide all information that is necessary to implement this section. These boards and the department shall annually report to the Legislature by no later than March 1 that number of licensees of these boards, placed on probation during the immediately preceding calendar year, who are:

- (1) Not receiving Medi-Cal reimbursement for certain surgical services or invasive procedures, including dental surgeries or invasive procedures, as a result of subdivision (a).
- (2) Continuing to receive Medi-Cal reimbursement for certain surgical or invasive procedures, including dental surgeries or invasive procedures, as a result of a determination of compelling circumstances made in accordance with subdivision (a).

(c) This section shall become inoperative on July 1, 2003, and, as of January 1, 2004, is repealed, unless a later enacted statute that is enacted before January 1, 2004, deletes or extends the dates on which it becomes inoperative and is repealed.

1 BILL LOCKYER, Attorney General
of the State of California
2 D. KENNETH BAUMGARTEN, State Bar No. 124371
Deputy Attorney General
3 California Department of Justice
110 West "A" Street, Suite 1100
4 San Diego, CA 92101
5 P.O. Box 85266
San Diego, CA 92186-5266
6 Telephone: (619) 645-2195
Facsimile: (619) 645-2061
7
8 Attorneys for Complainant

9 **BEFORE THE**
10 **DIVISION OF MEDICAL QUALITY**
11 **MEDICAL BOARD OF CALIFORNIA**
12 **DEPARTMENT OF CONSUMER AFFAIRS**
13 **STATE OF CALIFORNIA**

14 In the Matter of the Accusation Against:

15 ANDREA BOWER, M.D.

16 Respondent.

Case No. 10-2001-123318

REQUEST FOR DISCOVERY

[Gov. Code § 11507.6]

17 **TO RESPONDENT:**

18 Under section 11507.6 of the Government Code of the State of California, parties
19 to an administrative hearing, including the Complainant, are entitled to certain information
20 concerning the opposing party's case. A copy of the provisions of section 11507.6 of the
Government Code concerning such rights is included among the papers served.

21 **PURSUANT TO SECTION 11507.6 OF THE GOVERNMENT CODE, YOU**
22 **ARE HEREBY REQUESTED TO:**

- 23 1. Provide the names and addresses of witnesses to the extent known to the
24 Respondent, including, but not limited to, those intended to be called to testify at the hearing, and
- 25 2. Provide an opportunity for the Complainant to inspect and make a copy of any of
26 the following in the possession or custody or under control of the Respondent:
 - 27 a. A statement of a person, other than the Respondent, named in the initial
28 administrative pleading, or in any additional pleading, when it is claimed that the act or

1 omission of the Respondent as to this person is the basis for the administrative
2 proceeding;

3 b. A statement pertaining to the subject matter of the proceeding made by
4 any party to another party or persons;

5 c. Statements of witnesses then proposed to be called by the Respondent and
6 of other persons having personal knowledge of the acts, omissions or events which are
7 the basis for the proceeding, not included in (a) or (b) above;

8 d. All writings, including but not limited to reports of mental, physical and
9 blood examinations and things which the Respondent now proposes to offer in evidence;

10 e. Any other writing or thing which is relevant and which would be
11 admissible in evidence, including but not limited to, any patient or hospital records
12 pertaining to the persons named in the pleading;

13 f. Investigative reports made by or on behalf of the Respondent pertaining to
14 the subject matter of the proceeding, to the extent that these reports (1) contain the names
15 and addresses of witnesses or of persons having personal knowledge of the acts,
16 omissions or events which are the basis for the proceeding, or (2) reflect matters
17 perceived by the investigator in the course of his or her investigation, or (3) contain or
18 include by attachment any statement or writing described in (a) to (e), inclusive, or
19 summary thereof.

20 For the purpose of this Request for Discovery, "statements" include written
21 statements by the person, signed, or otherwise authenticated by him or her, stenographic,
22 mechanical, electrical or other recordings, or transcripts thereof, of oral statements by the person,
23 and written reports or summaries of these oral statements.

24 YOU ARE HEREBY FURTHER NOTIFIED that nothing in this Request for
25 Discovery should be deemed to authorize the inspection or copying of any writing or thing which
26 is privileged from disclosure by law or otherwise made confidential or protected as attorney's
27 work product.

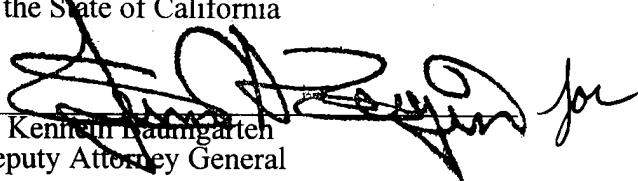
28 ///

1 Your response to this Request for Discovery should be directed to the undersigned
2 attorney for the Complainant at the address on the first page of this Request for Discovery **within**
3 **30 days after service** of the Accusation.

4 Failure without substantial justification to comply with this Request for Discovery
5 may subject the Respondent to sanctions pursuant to sections 11507.7 and 11455.10 to 11455.30
6 of the Government Code.

7 DATED: April 26, 2002

8 BILL LOCKYER, Attorney General
9 of the State of California

10 
11 D. Kenneth Baumgarten
12 Deputy Attorney General

13 Attorneys for Complainant

14 Req for discover.wpt 10/31/00
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DECLARATION OF SERVICE BY UNITED STATES CERTIFIED MAIL

In the Matter of the Accusation Against:

Andrea Bower, M.D.

File No. 10-2001-123318

I, the undersigned, declare that I am over 18 years of age and not a party to the within cause; my business address is 1430 Howe Avenue, Sacramento, California 95825. I served a true copy of the attached:

STATEMENT TO RESPONDENT; ACCUSATION; REQUEST FOR DISCOVERY; GOVERNMENT CODE SECTIONS 11507.5, 11507.6, 11507.7 and 11455.10; NOTICE OF DEFENSE FORM (2 COPIES); NOTIFICATION REGARDING SECTION 14124.12 OF THE WELFARE & INSTITUTION CODE; A MANUAL OF DISCIPLINARY GUIDELINES AND MODEL DISCIPLINARY ORDERS

by U.S. Certified mail on each of the following, by placing same in an envelope (or envelopes) addressed (respectively) as follows:

NAME AND ADDRESS

CERTIFICATION #

Andrea Bower, M.D.
31724 Rocking Horse Road
Escondido, CA 92026

7001 0360 0003 9101 5529

Andrea Bower, M.D.
120 Craven Road, Ste. 101
San Marcos, CA 92078

7001 0360 0003 9101 5512

Barry Ladendorf
Supervising Deputy Attorney General
Department of Justice
110 West 'A' Street, Suite 1100
San Diego, CA 92101

Each said envelope was then, on May 6, 2002, sealed and deposited in the United States mail at Sacramento, California, the county in which I am employed, as certified mail, with the postage thereon fully prepaid, and return receipt requested.

Executed on **May 6, 2002** at Sacramento, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.



Brenda Allen, Declarant

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Andrea Bower, M.D.
31724 Rocking Horse Rd.
Escondido, CA 92026

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly)

B. Date of Delivery
5-10-02

C. Signature

X

☐ Agent
☐ Addressee

D. Is delivery address different from item 1?

If YES, enter delivery address below:

☐ Yes
☐ No

3. Service Type

☒ Certified Mail ☐ Express Mail
☐ Registered ☒ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

7001 0360 0003 9101 5529

PS Form 3811, July 1999

Domestic Return Receipt

102595-99-M-1789

(A) 10-2001-123318

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Andrea Bower, M.D.
120 Craven Rd. Ste. 101
San Marcos, CA 92078

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly)

B. Date of Delivery

5-13-02

C. Signature

X

☐ Agent
☐ Addressee

D. Is delivery address different from item 1?

If YES, enter delivery address below:

☐ Yes
☐ No

3. Service Type

☒ Certified Mail ☐ Express Mail
☐ Registered ☒ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

7001 0360 0003 9101 5512

PS Form 3811, July 1999

Domestic Return Receipt

102595-99-M-1789

(A) 10-2001-123318

U.S. Postal Service
CERTIFIED MAIL RECEIPT

(Domestic Mail Only; No Insurance Coverage Provided)

OFFICIAL USE

Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$

Postmark
Here

Sent To

Street, Apt. No.;
or PO Box No.

City, State, ZIP+ 4

U.S. Postal Service
CERTIFIED MAIL RECEIPT

(Domestic Mail Only; No Insurance Coverage Provided)

OFFICIAL USE

Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$

Postmark
Here

Sent To

Street, Apt. No.;
or PO Box No.

City, State, ZIP+ 4